

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

(202) 662-6000

TELEFAX (202) 662 6291

BOBBY R. BURCHFIELD

DIRECT DIAL NUMBER

(202) 662-5350

DIRECT TELEFAX NUMBER

(202) 778-5350

LECONFIELD HOUSE

CURZON STREET

LONDON W1T 6AS

ENGLAND

TELEPHONE 44 (0) 495 5656

TELEFAX 44 (0) 495 3101

BRUSSELS CORRESPONDENT OFFICE

44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE 32-2 549-5730

TELEFAX 32-2 502 1386

May 5, 1998

BY HAND

F. Andrew Turley, Esq.
Supervisory Attorney
Central Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Matter Under Review No. 4728

Dear Mr. Turley:

This firm has been retained by Campaign For Working Families ("CWF") and Gary L. Bauer to respond to your letters of March 18, 1998, addressed to each of them (collectively, "Respondents"). Those letters notified Respondents that the Federal Election Commission ("the Commission") had received a complaint alleging that one or both of the Respondents may have violated federal election laws; stated that the complaint had been designated as Matter Under Review No. ("MUR") 4728; and apprised Respondents of their right to respond and to demonstrate that no action should be taken against them in this matter.

By letter dated March 31, 1998, the Commission granted Respondents' request for an extension of time to respond to May 5, 1998. This letter is submitted jointly on behalf of the Respondents. It sets forth why no further

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action should be taken against either Respondent in MUR No. 4728.

1. Background and Summary of Conclusions.

Judy Biggert and Peter Roskam were candidates for the Republican nomination to Congress from the 13th Congressional District in Illinois, the primary for which was held on March 17, 1998. On or about March 2, 1998, CWF distributed a two-page letter signed by its Chairman Gary L. Bauer to voters in this District. The letter compared the voting records of Roskam and Biggert on the issue of abortion, and urged each voter to "please cast your vote in the March 17 Republican primary for conservative Republican Peter Roskam." Approximately one week later, CWF paid for a second mailing, also containing express advocacy of Roskam over Biggert and also signed by Mr. Bauer. On Friday, March 14, 1998, the Biggert campaign stated publicly that it had filed a complaint with the Commission regarding the mailings. On Monday, March 16, 1998, CWF reported the cost of the mailings as an independent expenditure to the Commission in the amount of \$50,900.00.

The Commission's March 18 letters notified CWF and Mr. Bauer, respectively, of a complaint filed by Kevin Artl, Campaign Manager, on behalf of the Biggert campaign. For each of these two mailings, the complaint asserts, first, that the cost of the mailing was approximately \$20,000; and second,

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that CWF's payment of this cost was either (i) an unreported independent expenditure (Complaint at Paragraphs 20-21) or (ii) an in-kind contribution exceeding the permitted contribution limits for a multi-candidate committee (Complaint at Paragraphs 41-42).

As set forth below, Mr. Bauer should not even be a Respondent in MUR 4728, and there is no true allegation of any in-kind contribution in the complaint. While there were delays in reporting independent expenditures, reports were filed promptly after the error was discovered. Keeping this mitigating factor in mind, MUR No. 4728 should be closed in its entirety with no further action taken against Respondents.

**2. The Complaint Provides No Basis For
Further Action Against Mr. Bauer.**

The complaint repeatedly refers to "CWF and Gary Bauer," and Mr. Bauer's name did in fact appear prominently in the mailings. Significantly, however, the alleged bases for the claimed violations have nothing to do with Mr. Bauer. Assuming for a moment that the cost of the mailings was a contribution (which it was not), the complaint nowhere alleges that Mr. Bauer personally paid for the mailings. Obviously, if an excessive contribution was made, it was made by CWF; both mailings plainly indicate that they were paid for by CWF. Moreover, even the complainant agrees with this position. In his March 12, 1998, letter to the Commission, Mr. Artl states

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that the Roskam campaign has "received an in-kind contribution from *this group*," referring to CWF (emphasis added).

Alternatively, assuming that CWF failed to report its independent expenditures in a timely fashion, the complaint nowhere alleges that Mr. Bauer is the CWF officer responsible for maintaining the committee's records and filing reports with the Commission. Not surprisingly, the CWF treasurer, and not the Chairman, is responsible for reporting compliance. Even if Mr. Bauer were the treasurer, the complaint provides no basis for naming any CWF officer as a respondent in his or her individual capacity.

Based on the actions complained of by Mr. Artl, there simply is no basis under the Federal Election Campaign Act or the Commission's regulations for taking further action with respect to Mr. Bauer in MUR No. 4728.

**3. The Complaint Cannot Be the Basis
For Further Action On An In-Kind
Contribution Theory.**

Expenditures on express advocacy that are not made with the cooperation, prior consent, or at the suggestion of a candidate (or his campaign committee or other agents) are not contributions. 11 C.F.R. § 109.1(a). Only if the person making the expenditures containing express advocacy coordinates them with the campaign may such expenditures be deemed to be in-kind contributions. 11 C.F.R. § 109.1(c). CWF emphatically denies that there was any coordination between it

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and Roskam For Congress. An affidavit of Peter Dickinson, Executive Director of CWF, denying any such coordination is attached as Exhibit 1 hereto.

As an initial matter, however, the complaint in MUR No. 4728 does not even allege, and certainly offers no credible evidence of, coordination of any kind between CWF and the Roskam campaign. Conceivably, Paragraphs 9 and 30 of the complaint, which note that the mailings mention only Ms. Biggert and not the other candidates seeking the nomination, are meant to imply that Roskam For Congress "asked" CWF to attack Biggert. Yet there were obvious reasons for CWF to focus on these two names in its mailings. Roskam and Biggert differed in their positions on abortion, one of the issues of greatest importance to CWF. Moreover, Biggert and Roskam were two of the front-runners for the nomination (which Biggert won). Thus, targeting her both tracked CWF's philosophy and made additional sense for CWF in allocating its resources.

The Commission has been provided with no information to support an investigation into whether these mailings were coordinated contributions. Since the complaint does not even clearly allege coordination, there is no basis for treating the mailings other than as exactly what they were --

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independent expenditures rather than in-kind contributions.

**4. Two Late Filings Should Not Be Grounds
For Further Investigation Of Respondents.**

The complaint alleges failure to report each of the mailings within 24 hours of its being sent. 11 C.F.R. § 104.4(b). There are four reasons why this possibly tardy reporting should not be the basis for further action by the Commission.

First, as soon as the oversights were discovered, CWF reported the expenditures in reports filed on March 16 -- before the March 17 primary. (A copy of the report is attached as Exhibit 2). Moreover, Ms. Biggert's campaign became aware of, and itself publicized, the expenditures and their source. The Biggert campaign notified the press it had filed the complaint on which MUR 4728 is based, and publicly characterized the mailings as "illegal and excessive in-kind contributions." (See Exhibit 3, "PAC Funds For Roskam Questioned; Foe Biggert Charges Contribution Illegal", Chicago Tribune, Page 5, March 14, 1998). Thus, even if CWF inadvertently missed a reporting deadline, the independent expenditures were publicly disclosed (and criticized) well before voters cast their ballots.

Second, CWF has retained the premier election law accounting and compliance firm of Huckaby, Davis & Associates to handle all future CWF reporting obligations to the

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Commission. By doing so, CWF has shown its commitment to full and accurate reporting, and has taken concrete steps to assure that all future reports are timely and accurately filed.

Third, the late reporting had no apparent effect on the results of the primary. The candidate supported by the independent expenditures lost, and the candidate criticized by the expenditures -- Ms. Biggert -- won.

Fourth and finally, there have been no allegations of further reporting or other violations since the discovery of the late filing in the primary. CWF has made successful, good faith efforts to correct any possible reporting errors and to ensure full compliance with its reporting obligations.

In view of these facts and the limited resources of the Commission (and of CWF), as well as the more important enforcement matters arising out of the 1996 election cycle, CWF respectfully submits that no further action is warranted.

5. Conclusion.

Mr. Bauer is not a proper respondent in MUR No. 4728. Independent expenditures do not become contributions unless the spending is coordinated with a federal candidate, and no such coordination occurred here.

In view of the unintentional nature of CWF's reporting delays, CWF's forthright approach to correcting them, and the remedial measures implemented by CWF at its own

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initiative, Mr. Bauer and CWF respectfully request that the Commission take no further action in this matter.

If you have any further questions about CWF's reporting, or about Mr. Bauer's role in the letter at issue, please do not hesitate to contact me.

Sincerely,

Bobby R. Burchfield / b, C.D.H.
Bobby R. Burchfield

Verification

The undersigned, being the duly authorized Assistant Treasurer of Campaign for Working Families, does hereby verify that I have reviewed the foregoing response to Matter Under Review 4728 before the Federal Election Commission and that the response is true, accurate, and complete to the best of my knowledge, information, and belief.



Peter Dickinson

SUBSCRIBED AND SWORN TO before me
this 1 day of May, 1998

Notary Public

My commission expires: _____

Exhibit 1

AFFIDAVIT OF PETER DICKINSON

Peter Dickinson, being duly sworn, deposes and says:

1. I am an Executive Director of Campaign for Working Families. I have read the complaint underlying MUR 4728 and am aware of its allegations. I submit this declaration as part of the joint response to the complaint filed on behalf of Campaign for Working Families and Gary L. Bauer. I was personally involved in the decisions concerning the content and distribution of the mailings at issue in MUR 4728. Except where indicated, this declaration is based on my personal knowledge.

2. In March 1998, Campaign for Working Families distributed two mailings in connection with the Republican primary for the seat in the 13th Congressional District in the State of Illinois. These mailings supported the candidacy of Peter Roskam and criticized Judy Biggert, another candidate.

3. The cost of the two mailings discussed herein was reported to the Federal Election Commission as an independent expenditure on March 16, 1998, prior to March 17, 1998, the day of the Republican primary for the seat in the 13th Congressional District in the State of Illinois.

4. I understand that this matter arises from a complaint by the campaign of Judy Biggert. The complaint alleges that Campaign for Working Families either failed to timely report independent expenditures on behalf of Peter Roskam; or, alternatively, that Campaign for Working Families

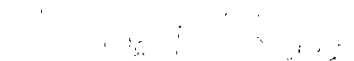
made an in-kind contribution to Mr. Roskam's campaign by funding the two mailings described above.

5. From my personal knowledge, I know that Campaign for Working Families engaged in no consultation, coordination or cooperation with Peter Roskam, his campaign officials, or any other agent of Peter Roskam, in connection with the two mailings complained of in MUR 4728. At no time did anyone in the Roskam campaign request the mailings, or offer suggestions or advice regarding what issues and themes should be featured in the mailings, and CWF sought no such input from the Roskam campaign. Finally, CWF did not seek approval from the Roskam Campaign to send the mailings, and to the best of my knowledge the Roskam Campaign had no advance knowledge that the mailings were going to occur.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.


Peter Dickinson

SUBSCRIBED AND SWORN TO before me
this 5 day of May, 1998



Notary Public

My commission expires: _____

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March 14, 1998 Saturday, DU PAGE SPORTS FINAL EDITION

SECTION: NEWS; Pg. 5; ZONE: D; ELECTION '98.

LENGTH: 497 words

HEADLINE: PAC FUNDS FOR ROSKAM QUESTIONED;
FOE BIGGERT CHARGES CONTRIBUTION ILLEGAL

BYLINE: By Lynn Van Matre, Tribune Staff Writer.

BODY:

The hotly contested race for the 13th Congressional District House seat being vacated by retiring U.S. Rep. Harris Fawell (R-Ill.) heated up a few more degrees Friday with allegations of illegal campaign contributions.

The campaign committee for state Rep. Judy Biggert (R-Hinsdale) said Friday it has filed a complaint with the Federal Election Commission charging that state Rep. Peter Roskam (R-Naperville), Biggert's chief opponent in the GOP primary, accepted illegal campaign contributions from the Campaign for Working Families, a conservative political action committee based in Washington.

Kevin Artl, Biggert's campaign manager, said the complaint alleges that Roskam accepted more than \$40,000 in "illegal and excessive in-kind contributions" from the group in the form of two anti-Biggert, pro-Roskam campaign mailings to district residents this month.

"These outsiders will stop at nothing--not even the law--to get what they want for Peter Roskam," Artl said. "They don't care about our party, our community or our laws."

A spokesman for the Roskam campaign countered by calling Biggert "a rank hypocrite."

"Biggert's campaign is the recipient of over \$50,000 of negative campaigning from a group distorting Peter Roskam's stance on term limits and (from) the liberal teachers unions in Washington. But she conveniently left that out of her pathetic smear," contended Rob Jesmer, Roskam's campaign manager.

Artl acknowledged that Biggert had received contributions from several PACs, but he said they were in accord with FEC rules.

Federal election law limits PAC contributions to \$5,000 for each candidate in an election. But PACs can spend unlimited funds to educate the public on issues, though they cannot work in conjunction with a candidate.

Biggert's camp contended that the CWF mailings, which it said falsified Biggert's voting record on partial-birth abortion, violated federal election law because they represented "collusion" between Roskam and that PAC. Jesmer said



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the CWF mailings were done independently of the Roskam campaign.

Peter Dickinson, co-executive director of CWF, called Biggert's charges "absurd" and said the PAC had acted legally.

"We decided to undertake an independent expenditure of a little more than \$40,000 in support of a candidate, following all of the FEC regulations," he said. "The rules are very clear that PACs are not allowed to coordinate (campaign efforts) with candidates. So, once we had the idea to do the mailings, we cut off all communications with the Roskam campaign.

"It appears that the Biggert campaign is getting a little hysterical," Dickinson added.

Biggert and Roskam are considered the leading contenders in the six-way GOP primary race in the 13th District.

The two represent competing philosophies within the Republican Party. Biggert, 60, is a moderate who supports a balanced budget and abortion rights. Roskam, 36, is strongly anti-tax and anti-abortion.

LANGUAGE: ENGLISH

LOAD-DATE: March 14, 1998



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SCHEDULE B

ITEMIZED INDEPENDENT EXPENDITURES

FEDERAL ELECTION
COMMISSION

(See Reverse Side for Instructions)

Page 1 of 1 Pages

FEB 16 4 45 PM '50

Name of Committee (in Full)		FEC ID #: C00325076		
Full Name, Mailing Address & ZIP Code of Each Payee	Amount of Expenditure	Date (month, day, year)	Amount	Name of Federal Candidate supported or opposed by this expenditure & office sought
WLS-AM 190 NORTH STATE STREET CHICAGO, ILL 60601	RADIO ADS	3/13/98	16,000. ⁰⁰	PETER ROSKAM House, 13 TH <input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose
WYLL-FM 25 NORTHWEST POINTE SUITE 400 ELEM GROVE VILLAGE, ILL 60067	RADIO ADS	3/13/98	2,610. ⁰⁰	PETER ROSKAM House, 13 TH <input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose
ASSOCIATION MAJOR SAUNDERS 1600 BIRCHWOOD AVENUE DES PLAINES, ILL 60018	DIRECT MAIL	3/4/98	50,900. ⁰⁰	PETER ROSKAM House, 13 TH <input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose
				<input type="checkbox"/> Support <input type="checkbox"/> Oppose
				<input type="checkbox"/> Support <input type="checkbox"/> Oppose
				<input type="checkbox"/> Support <input type="checkbox"/> Oppose
(2) SUBTOTAL of Itemized Independent Expenditures				
(3) SUBTOTAL of Unitemized Independent Expenditures				
(4) TOTAL Independent Expenditures				69,510. ⁰⁰

Under penalty of perjury I certify that the independent expenditures reported herein were not made in cooperation, consultation, concert, or in the aid of or suggestion of any candidate or any authorized committee or agent of a candidate or authorized committee. Furthermore, these expenditures did not involve the forwarding of dissemination, distribution, or circulation in whole or in part of any campaign material prepared by the candidate, his campaign committee, or their agent.

Signature

Date

Subscribed and sworn to before me this 16th day of MARCH 1998

My Commission expires:

1/31/2001

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